IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1546 OF 2002

The Salvation Army,
India Western Territory ..Petitioner.
Vs.
Mr. Sunil J. Ingle ..Respondent.

...

Mr. S.K. Chaturvedi for the Petitioner.
None for the Respondent.

CORAM : DR.D.Y.CHANDRACHUD, J.
8th April, 2005.

ORAL JUDGMENT :

1. The Salvation Army is a public trust registered under the provisions of the Bombay Public Trust Act, 1950. The object of the Trust is to provide free facilities to the poor, needy and under privileged in a hundred and nine countries all over the world. In Mumbai the Petitioner conducts a hostel for the visually impaired, a home for the aged, a home for orphaned children, a free feeding center, a center for the physically challenged, a school for the under-privileged and economically backward children and a general hospital. In the Petition it has been averred that the position of

'officership' in the Salvation Army is offered to those who are Salvationists i.e. members of the Salvation Army Church. This relationship expresses a spiritual desire of a person who wishes to dedicate his life to the service of God and mankind in the ranks of the Salvation Army. The relationship is purely voluntary in the sense that the officership can be terminated without any restraint. It has been stated that an undertaking is taken from an officer to the effect that there is no contract of service or employment nor any legal relationship between him and the Salvation Army.

2. The Respondent was an officer in the Salvation Army and his services were terminated on 25th June, 2001. Conciliation proceedings took place before the Deputy Commissioner of Labour and a reference to adjudication was made after the conciliation proceedings ended in failure. The roznama of the proceedings before the Labour Court shows that the reference, together with the conciliation papers, was forwarded by the Deputy Commissioner of Labour on 11th December, 2001. Notice was issued to the

Respondent to file his statement of claim. On 6th March, 2002, the Petitioner was represented by an official before the Labour Court. The matter was adjourned for the filing of the written statement to 27th March, 2002. On 27th March, 2002 the Respondent was present. The Petitioner filed the authority at Exh.C-3 of its advocate. A preliminary objection to the jurisdiction of the Labour Court was taken on that day. On the next date of hearing which was 10th April, 2002 the Respondent was present and he filed an objection questioning the entitlement of the Petitioner to be represented by an advocate in the proceedings. The objection was heard by the Labour Court and was allowed by the impugned order dated 24th April, 2002.

3. While admitting this Petition on 24th June, 2002 and granting a stay of proceedings before the Labour Court, the Learned Single Judge observed prima facie that the Labour Court had not followed the judgment of this Court in **T.K. Verghese v. Nichimen Corporation** (2001 (90) FLR 91).

4. Section 36 of the Industrial Disputes Act, 1947 deals with the

representation of parties. Sub section (1) provides that a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by any of those persons who meet the qualifications in clauses (a), (b) and (c). A provision is similarly made in relation to the representation to an employer in sub section (2). Sub section (3) then provides that no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceeding under the Act or in any proceedings before the Court. Sub section (4) provides that in any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be. Therefore, two requirements must be fulfilled before a legal practitioner can appear in such proceedings vis. (i) the consent of the other party to the proceedings and (ii) the leave of the Court or Tribunal as the case may be.

5. These provisions have been interpreted in decisions of several

High Courts. In **Engineering Mazdoor Sabha. v. Meher (M. R.) (Industrial Tribunal, Bombay)** (1966 1 LLJ 580) an industrial dispute between the petitioning union and the employer, the Second Respondent was referred for adjudication. An application for interim relief was kept for hearing on 12th September, 1963. On that day, the employer was represented by an advocate. The advocate for the union appeared and prayed for an adjournment. The matter was thereafter adjourned to 21st September, 1963 on which date an objection was raised to the appearance of the advocate. The objection was rejected by the Tribunal holding that if an objection had to be taken it ought to have been taken on the first date of hearing. Before the Division Bench of this Court, it was urged on behalf of the union that there was no effective hearing of the matter on 12th September, 1963 since only a prayer for adjournment had been made. The Division Bench held that this argument could not be accepted because the roznama of the case showed that on 12th September, 1963 an adjournment had been sought on behalf of the union on the ground that its representative was out of Bombay. The

advocate for the employer had no objection to the matter being adjourned. The Division Bench held that these entries in the roznama clearly showed that the fact that the advocate had appeared for the employer must have come to the notice of the representative who appeared on behalf of the union and no objection had been raised to his appearance. Even though the union had not given its express consent, the Division Bench held that it must be held as having given its consent atleast impliedly by not objecting to the appearance of the advocate for the employer. Consequently it was not open to the union to object to his appearance. In a decision of the Calcutta High Court in **Shiraz Golden Restaurant v. State of West Bengal** (2000 II LLJ 1101), Mr. Justice S.B.Sinha (as the Learned Judge then was) speaking for a Division Bench held that once leave has been granted in terms of Section 36(4) there is no provision in the Act to review it. The Calcutta High Court relied inter alia on several decisions in which it has been held that where a Vakalatnama is filed by a lawyer without any objection by the other side and it is accepted by the Court then it is to be inferred that the latter has given consent for the appearance

of a lawyer and that leave of the Court was also given. In **MSCO (P) Ltd. v. S.D.Rane** (1982 I LLJ 434) Mr. Justice D.P.Madon (as the Learned Judge then was) speaking for this Court held that neither the Act nor the Rules provide for the form or the manner in which. the consent of the other party is to be given. Normally, leave that is to be granted by a Court or Tribunal would be in writing and ordinarily the consent of a party to the engagement of a legal practitioner by the other side would also be given in writing. However, sub section 4 of Section 36, it was held, does not contain a requirement that the consent or leave must always be in writing and implied consent is not negatived by the statute. The same view has been taken by the High Court of Kerala in **Calicut Co-operative Milk Supply Union v. Calicut Co-operative Milk Supply Workers Union** (1986 II LLJ 422) and in **Francis Gomez v. President, Thiruvananthapuram Shops & Commercial Employees' Union** (1999 III LLJ Supp 1250). There is also a judgment of Mr. Justice R.J. Kochar speaking for this Court in **T.K.Varghese v. Nichimen Corporation** (2001 90 FLR 91).

6. Having regard to this settled position in law, what emerges in the present case is that on 27th March, 2002, the advocate appearing on behalf of the Petitioner filed his Vakalatnama (Exh.C-3) There was no objection to the Vakalatnama. On that day, the Petitioner filed an application questioning the jurisdiction of the Labour Court (Exh.C-4) and the matter was adjourned by consent for the reply of the Respondent to 10th April, 2002. The taking of the Vakalatnama on the record is indicative of the leave which must be read and regarded as having been granted by the Labour Court. There was no objection to the filing of the Vakalatnama and to the appearance of the advocate on 27th March, 2002. In view of the law laid down by the Division Bench of this Court in **Engineering Mazdoor Sabha** (supra), it was clearly not open to the Respondent to raise an objection, having failed to raise it on the very first day of the appearance of the advocate. Before the Labour Court, the judgment of the Division Bench of this Court in **Engineering Mazdoor Sabha** (supra) and of a Learned Single Judge in **T.K.Varghese** (supra) were cited. The Labour Court declined to follow the settled position in law which

emerges from these judgments for the specious reason that the Respondent objected to the appearance of the advocate on the next date of hearing. The order of the Labour Court is manifestly in error and the interference of this Court under Article 227 of the Constitution is warranted. Before concluding it would be necessary to record that the Respondent has not appeared in these proceedings. Counsel appearing for the Petitioner stated that on several of the previous hearings, the matter had to be adjourned since the Respondent had remained absent and that in pursuance of the directions of this Court telegraphic intimation has been furnished to the Respondent from time to time.

7. The Petition is accordingly allowed. The impugned order of the Labour Court dated 24th April, 2002 is quashed and set aside. The application at Exh.U-3 filed by the Respondent shall stand dismissed. The Labour Court shall now proceed to dispose of Reference (IDA) 755 of 2001.